
PRELIMINARY DRAFT

No. 3328

PREPARED BY

LEGISLATIVE SERVICES AGENCY

2009 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 33-37; IC 33-39-6-5.5; IC 33-39-7.

Synopsis: Prosecuting attorneys retirement fund issues. Defines "salary", for purposes of computing a retirement benefit, to include the total salary paid to a participant in the prosecuting attorneys' retirement fund (fund) by the state and by a county or counties. Eliminates contributions for a participant with at least 22 years of creditable service. For a participant who applies for a retirement benefit after June 30, 2009, bases the computation of the annual retirement benefit on the salary being paid for the office that the participant held at the time of the participant's separation from service. (Currently, the computation is based on the highest annual salary that was paid to the participant before separation from service.) Reduces from 0.25% to 0.10% per month the reduction factor for a retirement benefit computed for a participant who retires before 65 years of age. Provides a prorated retirement benefit for partial years of service. Makes changes to the fund's disability benefit by: (1) eliminating the minimum service required to receive a disability benefit; (2) redefining "disability"; and (3) increasing the salary percentages used to compute a disability benefit to equal the percentages used by the judges' retirement system for the same years of service. Increases the minimum annual survivor benefit from \$7,000 to \$12,000. Provides that benefit increases paid after June 30, 2009, to a participant who applied for a retirement
(Continued next page)

Effective: July 1, 2009.



Digest Continued

benefit before July 1, 2009, or to certain terminated vested participants, are equal to the percentage by which the salary being paid for the office that the participant held at the time of the participant's separation from service increases. Increases the court administration fee from \$5 to \$7, and directs that the additional amount be paid into the fund.



A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 33-37-5-27, AS AMENDED BY P.L.122-2008, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 27. (a) This subsection does not apply to the following:

- (1) A criminal proceeding.
- (2) A proceeding to enforce a statute defining an infraction.
- (3) A proceeding for an ordinance violation.

In each action filed in a court described in IC 33-37-1-1, and in each small claims action in a court described in IC 33-34, the clerk shall collect a court administration fee of ~~five~~ **seven** dollars ~~(\$5)~~. **(\$7)**.

(b) In each action in which a person is:

- (1) convicted of an offense;
- (2) required to pay a pretrial diversion fee;
- (3) found to have committed an infraction; or
- (4) found to have violated an ordinance;

the clerk shall collect a court administration fee of ~~five~~ **seven** dollars ~~(\$5)~~. **(\$7)**.

SECTION 2. IC 33-37-7-9, AS AMENDED BY P.L.122-2008, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. (a) On June 30 and on December 31 of each year, the auditor of state shall transfer to the treasurer of state ~~nine ten million two three hundred seventy-seven fifty-one thousand twenty-three ninety-eight~~ dollars ~~(\$9,277,023)~~ **(\$10,351,098)** for distribution under subsection (b).

(b) On June 30 and on December 31 of each year, the treasurer of state shall deposit into:

- (1) the family violence and victim assistance fund established by IC 12-18-5-2 an amount equal to ~~eight seven and three-hundredths~~ **twenty hundredths** percent ~~(8.03%)~~; **(7.20%)**;
- (2) the Indiana judges' retirement fund established by IC 33-38-6-12 an amount equal to ~~thirty-eight~~ **thirty-four** and



fifty-five hundredths percent (~~38.55%~~); **(34.55%)**;

(3) the law enforcement academy building fund established by IC 5-2-1-13 an amount equal to two and ~~fifty-six~~ **thirty** hundredths percent (~~2.56%~~); **(2.30%)**;

(4) the law enforcement training fund established by IC 5-2-1-13 an amount equal to ~~ten~~ **nine** and ~~twenty-seven~~ **twenty-one** hundredths percent (~~10.27%~~); **(9.21%)**;

(5) the violent crime victims compensation fund established by IC 5-2-6.1-40 an amount equal to ~~eleven~~ **ten** and ~~ninety-three~~ **seventy** hundredths percent (~~11.93%~~); **(10.70%)**;

(6) the motor vehicle highway account an amount equal to ~~nineteen~~ **seventeen** and ~~forty-nine~~ **forty-seven** hundredths percent (~~19.49%~~); **(17.47%)**;

(7) the fish and wildlife fund established by IC 14-22-3-2 an amount equal to ~~twenty-five~~ **twenty-three** hundredths percent (~~0.25%~~); **(0.23%)**;

(8) the Indiana judicial center drug and alcohol programs fund established by IC 12-23-14-17 for the administration, certification, and support of alcohol and drug services programs under IC 12-23-14 an amount equal to one and ~~sixty-three~~ **forty-seven** hundredths percent (~~1.63%~~); **and (1.47%)**;

(9) the DNA sample processing fund established under IC 10-13-6-9.5 for the funding of the collection, shipment, analysis, and preservation of DNA samples and the conduct of a DNA data base program under IC 10-13-6 an amount equal to ~~seven~~ **six** and ~~twenty-nine~~ **fifty-four** hundredths percent (~~7.29%~~); **(6.54%)**; and

(10) the prosecuting attorneys retirement fund established by IC 33-39-7-9 an amount equal to ten and thirty-three hundredths percent (10.33%);

of the amount transferred by the auditor of state under subsection (a).

(c) On June 30 and on December 31 of each year, the auditor of state shall transfer to the treasurer of state for deposit into the public defense fund established under IC 33-40-6-1:

(1) after June 30, 2004, and before July 1, 2005, one million seven hundred thousand dollars (\$1,700,000); and

(2) after June 30, 2005, two million seven hundred thousand dollars (\$2,700,000).

SECTION 3. IC 33-39-6-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 5.5. (a) In addition to the salary provided under section 2 or 5 of this chapter, a full-time prosecuting attorney or deputy prosecuting attorney may receive any additional salary provided by the county under IC 36-2-5-14 or IC 36-3-6-3(c).**

(b) Before November 2 each year, the county auditor of each county shall certify to the prosecuting attorneys council the



amounts, if any, the county will provide during the ensuing calendar year for full-time prosecuting attorney and deputy prosecuting attorney salaries under IC 36-2-5-14 or IC 36-3-6-3(c).

(c) The county council of a county that provides additional salary under IC 36-2-5-14 or IC 36-3-6-3(c) shall appropriate a sufficient amount to pay the additional salary provided by the county.

(d) The state shall deposit quarterly in the state general fund the money received from the counties under subsection (e) for additional salary provided under IC 36-2-5-14 or IC 36-3-6-3(c).

(e) A county that provides additional salary for a full-time prosecuting attorney or deputy prosecuting attorney under IC 36-2-5-14 or IC 36-3-6-3(c) shall determine for the prosecuting attorney and each deputy prosecuting attorney whether the total of:

(1) the payment made on behalf of that prosecuting attorney or deputy prosecuting attorney;

(2) previous payments made on behalf of that prosecuting attorney or deputy prosecuting attorney in the same calendar year; and

(3) the state share of:

(A) the prosecuting attorney's salary under section 5 of this chapter; or

(B) the deputy prosecuting attorney's salary under section 2 of this chapter;

exceeds the Social Security wage base established by the federal government for that year. If the total does not exceed the Social Security wage base, the payment made under subsection (d) on behalf of that prosecuting attorney or deputy prosecuting attorney must also be accompanied by an amount equal to the employer's share of Social Security taxes and Medicare taxes. If the total exceeds the Social Security wage base, the part of the payment on behalf of the prosecuting attorney or deputy prosecuting attorney that is below the Social Security wage base must be accompanied by an amount equal to the employer's share of Social Security taxes and Medicare taxes, and the part of the payment on behalf of the prosecuting attorney or deputy prosecuting attorney that exceeds the Social Security wage base must be accompanied by an amount that is equal to the employer's share of Medicare taxes.

SECTION 4. IC 33-39-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. As used in this chapter, "salary" means the **total** salary paid to a participant by the state **plus any additional salary paid by a county or counties under IC 36-2-5-14(b) or IC 36-3-6-3(c)**, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code. ~~The term does not include an amount paid to~~



1 a participant by a county or counties.

2 SECTION 5. IC 33-39-7-12 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) Except as
4 provided in subsection (b) **or (c)**, each participant shall make
5 contributions to the fund as follows:

6 (1) A participant described in section 8(a)(1) of this chapter shall
7 make contributions of six percent (6%) of each payment of salary
8 received for services after December 31, 1989.

9 (2) A participant described in section 8(a)(2) or 8(a)(3) of this
10 chapter shall make contributions of six percent (6%) of each
11 payment of salary received for services after June 30, 1994.

12 A participant's contributions shall be deducted from the participant's
13 monthly salary by the auditor of state and credited to the fund.

14 (b) The state may pay the contributions for a participant.

15 **(c) A participant who completes twenty-two (22) years of**
16 **creditable service in the fund is not required to make any**
17 **additional contributions to the fund.**

18 SECTION 6. IC 33-39-7-16, AS AMENDED BY P.L.33-2006,
19 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2009]: Sec. 16. (a) This section does not apply to a participant
21 who meets the requirements for disability benefits under section 17 of
22 this chapter.

23 (b) Except as provided in subsections (c) and ~~(d)~~, **(e)**, the amount of
24 the annual retirement benefit to which a participant who applies for a
25 retirement benefit and who is at least sixty-five (65) years of age is
26 entitled equals the product of:

27 (1) the **highest annual applicable salary that was paid to the**
28 **participant before separation from service determined under**
29 **subsection (g);** multiplied by

30 (2) the percentage prescribed in the following table:

31 Participant's Years	Percentage
32 of Service	
33 Less than 8	0
34 8	24%
35 9	27%
36 10	30%
37 11	33%
38 12	50%
39 13	51%
40 14	52%
41 15	53%
42 16	54%
43 17	55%
44 18	56%
45 19	57%
46 20	58%



1	21	59%
2	22 or more	60%

(c) If a participant who applies for a retirement benefit is not at least sixty-five (65) years of age, the participant is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were sixty-five (65) years of age reduced by ~~one-fourth percent (0.25%)~~ **one (1) of the following percentages** for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday:

(1) For a participant who applies for a retirement benefit before July 1, 2009, one-quarter percent (0.25%).

(2) For a participant who applies for a retirement benefit after June 30, 2009, one-tenth percent (0.1%).

(d) This subsection applies to a retirement benefit computed under subsection (b) or (c). If a participant has a partial year of service in addition to at least eight (8) full years of service, a participant is entitled to have added to the percentage prescribed under subsection (b)(2) an additional amount that is determined by prorating between the applicable percentages based on the number of months in the partial year of service.

~~(d)~~ (e) Benefits payable to a participant under this section are reduced by the pension, if any, that would be payable to the participant from the public employees' retirement fund if the participant had retired from the public employees' retirement fund on the date of the participant's retirement from the prosecuting attorneys retirement fund. Benefits payable to a participant under this section are not reduced by annuity payments made to the participant from the public employees' retirement fund.

~~(e)~~ (f) If benefits payable from the public employees' retirement fund exceed the benefits payable from the prosecuting attorneys retirement fund, the participant is entitled at retirement to withdraw from the prosecuting attorneys retirement fund the total sum contributed plus interest at the rate of five and one-half percent (5.5%) compounded annually.

(g) The applicable salary is one (1) of the following:

(1) The highest annual salary that was paid to the participant before separation from service for:

(A) a participant who applies to receive a retirement benefit from the fund before July 1, 2009; or

(B) a participant who:

(i) before July 1, 2009, separates from service;

(ii) is entitled to receive a retirement benefit from the fund, but does not apply before July 1, 2009, to receive a retirement benefit from the fund; and

(iii) does not earn any service credit in the fund after June 30, 2009.



(2) The salary being paid for the office that the participant held at the time of the participant's separation from service for a participant who:

(A) applies to receive a benefit after June 30, 2009; and

(B) is not a participant described in subdivision (1)(B).

SECTION 7. IC 33-39-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) Except as provided in subsection ~~(b)~~, **(c)**, a participant who becomes disabled **before July 1, 2009**, while in active service in a position described in section 8 of this chapter may retire for the duration of the disability if:

(1) the participant has at least five (5) years of creditable service;

(2) the participant has qualified for Social Security disability benefits and has furnished proof of the Social Security qualification to the board; and

(3) at least once each year until the participant becomes sixty-five (65) years of age a representative of the board verifies the continued disability.

For purposes of this section, a participant who has qualified for disability benefits under the federal civil service system is considered to have met the requirement of subdivision (2) if the participant furnishes proof of the qualification to the board.

(b) Except as provided in subsection (c), a participant who becomes disabled after June 30, 2009, while in active service in a position described in section 8 of this chapter may retire for the duration of the disability if:

(1) the board determines that:

(A) the participant is incapacitated because of at least one

(1) physical or mental condition that renders the participant unable to perform the essential duties of a prosecuting attorney; and

(B) the condition is likely to be permanent; and

(2) at least once each year until the participant becomes sixty-five (65) years of age the board verifies the continued disability.

~~(b)~~ **(c)** Benefits may not be provided under this chapter for any disability that:

(1) results from an intentionally self-inflicted injury or attempted suicide while sane or insane;

(2) results from the participant's commission or attempted commission of a felony; or

(3) begins within two (2) years after a participant's entry or reentry into active service in a position described in section 8 of this chapter and was caused or contributed to by a mental or physical condition that manifested itself before the participant entered or reentered active service.

~~(c)~~ **(d)** To the extent required by the Americans with Disabilities



Act, the transcripts, reports, records, and other material generated to prove that an individual is qualified for disability benefits under this section shall be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

SECTION 8. IC 33-39-7-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) Except as provided in subsection ~~(b)~~, **(c)**, the amount of the annual benefit payable to a participant who meets the requirements for disability benefits under section 17 of this chapter is equal to the product of:

- (1) the annual salary that was paid to the participant at the time of separation from service; multiplied by
- (2) the **applicable** percentage prescribed in **one (1) of the following table:**

(A) For a participant who applies for a disability benefit before July 1, 2009:

Participant's Years of Service	Percentage
Less than 5	0
5-10	40%
11	41%
12	42%
13	43%
14	44%
15	45%
16	46%
17	47%
18	48%
19	49%
20 or more	50%

(B) For a participant who applies for a disability benefit after June 30, 2009:

Participant's Years of Service	Percentage
0-12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

(b) If a participant has a partial year of service in addition to at



1 least eight (8) full years of service, a participant is entitled to have
 2 added to the percentage prescribed under subsection (a)(2) an
 3 additional amount that is determined by prorating between the
 4 applicable percentages based on the number of months in the
 5 partial year of service.

6 ~~(b)~~ (c) Benefits payable to a participant under this section are
 7 reduced by the amounts, if any, that are payable to the participant from
 8 the public employees' retirement fund.

9 SECTION 9. IC 33-39-7-19, AS AMENDED BY P.L.33-2006,
 10 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2009]: Sec. 19. (a) The surviving spouse of a participant who:

12 (1) dies; and

13 (2) on the date of death:

14 (A) was receiving benefits under this chapter;

15 (B) had completed at least eight (8) years of service in a
 16 position described in section 8 of this chapter; or

17 (C) met the requirements for disability benefits under section
 18 17 of this chapter;

19 is entitled, regardless of the participant's age, to the benefit prescribed
 20 by subsection (b) or (c).

21 (b) **This subsection applies to the surviving spouse of a**
 22 **participant who dies before July 1, 2009.** The surviving spouse is
 23 entitled to a benefit for life equal to the greater of:

24 (1) seven thousand dollars (\$7,000); or

25 (2) fifty percent (50%) of the amount of retirement benefit the
 26 participant was drawing at the time of death, or to which the
 27 participant would have been entitled had the participant retired
 28 and begun receiving retirement benefits on the date of death, with
 29 reductions as necessary under section 16(c) of this chapter.

30 (c) **This subsection applies to the surviving spouse of a**
 31 **participant who dies after June 30, 2009.** The surviving spouse is
 32 entitled to a benefit for life equal to the greater of:

33 (1) twelve thousand dollars (\$12,000); or

34 (2) fifty percent (50%) of the amount of retirement benefit the
 35 participant was drawing at the time of death, or to which the
 36 participant would have been entitled had the participant
 37 retired and begun receiving retirement benefits on the date of
 38 death, with reductions as necessary under section 16(c) of this
 39 chapter.

40 ~~(c)~~ (d) Benefits payable to a surviving spouse under this section are
 41 reduced by the amounts, if any, that are payable to the surviving spouse
 42 from the public employees' retirement fund as a result of the
 43 participant's death.

44 SECTION 10. IC 33-39-7-26 IS ADDED TO THE INDIANA
 45 CODE AS A NEW SECTION TO READ AS FOLLOWS
 46 [EFFECTIVE JULY 1, 2009]: Sec. 26. (a) **This section applies:**



1 **(1) only to a participant:**

2 **(A) who applies to receive a retirement benefit from the**
 3 **fund before July 1, 2009; or**

4 **(B) who:**

5 **(i) before July 1, 2009, separates from service;**

6 **(ii) is entitled to receive a retirement benefit from the**
 7 **fund but does not apply before July 1, 2009, to receive a**
 8 **retirement benefit; and**

9 **(iii) does not earn any service credit in the fund after**
 10 **June 30, 2009; and**

11 **(2) only in state fiscal years beginning after June 30, 2009.**

12 **(b) If a salary increase is provided in a particular state fiscal**
 13 **year under IC 33-39-6-5, or any other provision enacted by the**
 14 **general assembly in the state fiscal year, the monthly benefit**
 15 **payable under this chapter to a participant described in subsection**
 16 **(a) shall be increased by the same percentage by which salaries are**
 17 **increased under IC 33-39-6-5 in that state fiscal year. The**
 18 **percentage increase shall be applied to the monthly benefit**
 19 **(including any previous increases to the monthly benefit received**
 20 **under this section or under any other provision) received by the**
 21 **participant as of June 30 of the immediately preceding state fiscal**
 22 **year. The percentage increase to the monthly benefit takes effect**
 23 **at the same time that the salary increase under IC 33-39-6-5 takes**
 24 **effect.**

25 **(c) An increase payable under this section may not include any**
 26 **amount based on the percentage by which any salary provided by**
 27 **a county or counties under IC 36-2-5-14 or IC 36-3-6-3(c) is**
 28 **increased.**

29 **SECTION 11. [EFFECTIVE JULY 1, 2009] (a) As used in this**
 30 **SECTION, "fund" refers to the prosecuting attorneys retirement**
 31 **fund established by IC 33-39-7-9.**

32 **(b) IC 33-39-7-7, IC 33-39-7-12, IC 33-39-7-16, IC 33-39-7-17,**
 33 **IC 33-39-7-18, and IC 33-39-7-19, all as amended by this act, apply**
 34 **only to a participant who, after June 30, 2009, earns creditable**
 35 **service in the fund for service in a position described in**
 36 **IC 33-39-7-8(a).**

